

Jonathan K. Levine (State Bar No. 220289)
jkl@girardgibbs.com

Elizabeth C. Pritzker (State Bar No. 146267)
ecp@girardgibbs.com

Todd I. Espinosa (State Bar No. 209591)
tie@girardgibbs.com

GIRARD GIBBS LLP

601 California Street, 14th Floor
San Francisco, California 94108

San Francisco, California 94108
Telephone: (415) 981-4800

Facsimile: (415) 981-4846

Attorneys for Individual and Representative

Plaintiffs Clarke and Rebecca Wixon, Norman

and Barbara Wixon, Kandice Scattolon and the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Clarke and Rebecca Wixon, Norman and Barbara Wixon, and Kandice Scattolon, on behalf of themselves and all others similarly situated.

Plaintiffs,

V.

Wyndham Resort Development Corp. (f/k/a Trendwest Resorts, Inc.),

Defendant.

Case No. C 07 2361 JSW (BZ)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT
AS MODIFIED HEREIN**

CLASS ACTION

Date: December 3, 2010

Time: 9:00 a.m.

Courtroom: Hon. Jeffrey S. White

1 This matter came before the Court for hearing on December 3, 2010, on the joint application of
 2 Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon and Kandice Scattolon (“Plaintiffs”)
 3 and Defendant Wyndham Resort Development Corporation (“Wyndham”) (Plaintiffs and Wyndham
 4 are referred to collectively as the “Parties”) for preliminary approval of the proposed Settlement
 5 Agreement and Release (“Settlement”), resolving the class claims asserted in the litigation against
 6 Wyndham. In their joint application, the Parties further request (i) leave for Plaintiffs to file a Sixth
 7 Amended Complaint to conform the class definition set forth in the pleadings with that contained in the
 8 proposed Settlement, (ii) preliminary certification of a settlement class, and (iii) approval of the form of
 9 Summary Notice to be electronically published to the settlement class.

10 The Court having considered all papers filed and proceedings had herein, and otherwise being
 11 fully informed in the premises and good cause appearing therefore, **IT IS HEREBY ORDERED** that:

12 1. Solely for purposes of the proposed Settlement, the Court grants Plaintiffs leave to file a
 13 Sixth Amended Complaint to conform the class definition and class allegations to the proposed
 14 Settlement, which is attached as Exhibit 1 to the Parties’ Joint Application. Wyndham is excused from
 15 filing an answer or any other responsive pleading with respect to the Sixth Amended Complaint,
 16 without prejudice to Wyndham and its right to deny allegations and otherwise respond under the
 17 Federal Rules of Civil Procedure, absent this Settlement becoming effective.

18 2. The Court previously entered an order certifying a litigation class pursuant to Fed. R.
 19 Civ. P. 23. (See Dkt No. 420.) For the reasons stated in the Court’s prior class certification order, the
 20 Court finds that the Parties’ proposed settlement class satisfies the prerequisites of numerosity,
 21 commonality, typicality, and adequacy of representation, and further finds that common questions
 22 predominate over any questions affecting only individual members such that resolution on a class basis
 23 is superior to other available methods for a fair resolution of this controversy. Fed. R. Civ. P. 23(a),
 24 (b). Accordingly, the Court preliminarily certifies the following class for purposes of the proposed
 25 Settlement (the “Settlement Class”):

26 All Current WorldMark, The Club members as of Preliminary Approval. Excluded from
 27 the Class are Defendants, any entity in which any Defendant has or had a controlling
 28 interest, any officers or directors of Wyndham, the legal representatives, heirs,
 successors, and assigns of Defendants, and any judge assigned to this action and his or
 her immediate family.

1 3. Capitalized terms not otherwise defined herein shall have the same meaning as set forth
2 in the Settlement.

3 4. The Court preliminarily approves the proposed Settlement, finding that its terms appear
4 sufficiently fair, reasonable, and adequate to warrant dissemination of notice of the proposed Settlement
5 to the Settlement Class. The Court finds that the proposed Settlement contains no obvious deficiencies
6 and that the parties entered into the proposed Settlement in good faith, following arms-length
7 negotiation between their respective counsel.

8 **With the modification noted,**

9 5. The Court hereby approves the form and procedures for disseminating a Summary
10 Notice of Class Action Settlement (“Summary Notice”) to the Settlement Class set forth in the proposed
11 Settlement. Within ten (10) business days after entry of this Order: (a) Wyndham shall cause the
12 Summary Notice to be posted in a clear and prominent manner in a location accessible only to
13 WorldMark members on the WorldMark by Wyndham website (www.worldmarktheclub.com); and (b)
14 Plaintiffs’ counsel shall cause the Summary Notice to be posted in a clear and prominent manner on the
15 Girard Gibbs LLP firm website (www.girardgibbs.com). The Summary Notice shall remain on these
16 websites until formal settlement notice is issued to the Settlement Class or until such other date as the
Court may order. **The summary notice shall be modified to reflect that Plaintiffs may receive
incentive awards in the amount of \$5,000, which are subject to Court approval.**

17 6. Wyndham shall comply with the requirements of 28 U.S.C. § 1715(b) and timely serve
18 notice of the proposed Settlement upon the appropriate federal official and the appropriate State official
19 of each State in which a Settlement Class member resides. Wyndham shall also provide copies of its
20 submissions to Plaintiffs’ counsel.

21 7. On or before March 3, 2011, the Parties shall submit a report to the Court
22 advising of: (i) the WorldMark Board’s consent to the Settlement; and (ii) the status of the Parties’
23 efforts to obtain Regulatory Approval to implement the terms of the Settlement. If, at that time,
24 Wyndham attests that Regulatory Approval is, in Wyndham’s estimate, likely to be attained, the Parties
25 may propose a timeline and procedure for providing formal settlement notice to the Settlement Class,
26 and propose a hearing and schedule for final settlement approval by the Court.

27 //

28 //

1 8. A further status conference shall be held on March 25, 2011 at 1:30 p.m.

2 **IT IS SO ORDERED.**

3 4 Dated: December 3, 2010

4 5 
Honorable Jeffrey S. White
United States District Judge

6 7 **The Court also has received and considered letters from Matthew Shiner**
7 8 **and Robin Miller, which will be made part of the record. The Court finds**
8 9 **that those arguments are better addressed at the time this matter is**
9 10 **submitted for final approval.**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Elizabeth C. Pritzker, hereby certify that on October 21, 2010, I filed the following document(s):

1. [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

By ECF (Electronic Case Filing): I e-filed the above-detailed document utilizing the United States District Court, Northern District of California's mandated ECF service on October 21, 2010. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document(s) upon confirmation of e-filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, CA on October 21, 2010.

/S/ *Elizabeth C. Pritzker*